



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

DOCKET NO.: CWA-08-2002-44

IN THE MATTER OF:

MONTANA RAIL LINK, INC.

101 International Way
Missoula, MT 59808

Respondent

)
)
)
)
)
)
)

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

FEBRUARY 6, 2003

DATE

SIGNED

Alfred C. Smith
Regional Judicial Officer



Docket No. CWA-08-2002-44

CONSENT AGREEMENT

4. This Consent Agreement, upon incorporation into a final consent order, applies to and is binding upon EPA and upon Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.

5. This Consent Agreement contains all terms of the settlement agreed to by the parties.

6. Respondent consents and agrees that not more than 30 days after Respondent's receipt of a signed final order in this matter, Respondent shall pay a civil penalty in the amount of seventeen thousand dollars (\$17,000) by remitting a cashier's or certified check for that amount, payable to "Oil Spill Liability Trust Fund", with the docket number and Respondent's name

written on the check, to:

Jane Nakad (8ENF-T)
Technical Enforcement Program (8ENF-T)
U.S. EPA Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466

A copy of the check shall be sent simultaneously to:

Brenda L. Morris, Attorney
Legal Enforcement Program (8ENF-L)
U.S. EPA Region VIII
999 19th Street, Suite 300
Denver, Colorado 80202-2466

and

Ms. Tina Artemis, RC
Regional Hearing Clerk
U.S. EPA Region VIII
999 19th Street, Suite 300
Denver, Colorado 80202-2466

7. Interest on the penalty amount shall accrue at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. Interest shall accrue from the effective date of the Consent Agreement if the Respondent tenders a late payment. A late payment charge of fifteen dollars (\$15.00) shall be imposed after the first 30 days that the payment, or any portion thereof, is overdue, with an additional charge of fifteen dollars (\$15.00) imposed for each subsequent 30-day period until the payment due is made. In addition, a six percent (6%) per annum penalty shall be applied on any principal amount not paid within 90 days after receipt of the final order.

8. The penalty specified in paragraph 6, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

9. The parties agree that Respondent's penalty should be mitigated by a Supplemental Environmental Project ("SEP") which is defined in Exhibit A to this Consent Agreement. The SEP includes purchasing and staging emergency response equipment for the Department of Emergency Service (DES) District One located in Sanders County, Montana, and District Three located in Park County, Montana.

10. Respondent agrees to complete the SEP by no later than February 1, 2004, and expend a total of not less than fifty five thousand dollars (\$55,000) on the SEP.

11. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

12. Whether Respondent has complied with the terms of this Consent Agreement, including the purchasing and staging of the emergency response equipment as detailed in Exhibit A and providing the funding for the requisite training, shall be the sole determination of EPA.

13. Respondent shall submit a SEP Completion Report by no later than March 1, 2004, to: Brenda L. Morris, Enforcement Attorney, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, which shall include:

- (i) A detailed description of the activities performed, including a map showing the location of the staging area(s) and a listing of all response supplies for the response trailers;
- (ii) A description of any problems encountered and the solutions thereto;

- (iii) Itemized costs, documented by copies of purchase orders and receipts or canceled checks;
- (iv) A list of training attendees, their respective employers, and copies of the training outline and any materials provided;
- (v) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement; and
- (vi) A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

14. Respondent agrees that failure to prepare and submit the SEP Completion Report required by paragraph 13 shall be deemed a violation of this Consent Agreement.

15. Respondent shall maintain legible copies of documentation of any and all documents or reports submitted to EPA pursuant to this Consent Agreement for a period of not less than three years, and Respondent shall provide the documentation to EPA within seven days of a request for such information. In all documents or reports, including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based

on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I

am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

16. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency for alleged violations of the Clean Water Act, as amended by the Oil Pollution Act."

17. Respondent hereby agrees not to claim any funds expended in the performance of the SEP as a deductible expense for purposes of Federal taxes. In addition, Respondent hereby agrees that within thirty (30) days of the date it submits its Federal tax reports for the calendar year in which the above-identified SEP is completed, it will submit to EPA, at the name and address shown above in paragraph 13, certification that any funds expended in performance of the SEP have not been deducted from Federal taxes.

18. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the Clean Water Act, as amended by the Oil Pollution Act, and its implementing regulations.

19. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

20. Nothing in this Consent Agreement shall be construed as a waiver by the U.S. EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.

21. The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions for this Consent Agreement and to bind the party he represents to the terms and conditions of this Consent Agreement.

22. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

23. Each party shall bear its own costs and attorneys fees in connection with this matter.

24. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

**In the Matter of: Montana Rail Link
Docket No. CWA-08-2002-44**

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION VIII,
Complainant.**

Date: 1-31-03

By: DAVID JANIK for/
Michael T. Risner
Director
David J. Janik
Supervisory Enforcement Attorney
Legal Enforcement Program

Date: 2-04-03

By: SIGNED
Elisabeth Evans
Director
Technical Enforcement Program

Date: 1-31-03

By: SIGNED
Brenda L. Morris
Enforcement Attorney
Legal Enforcement Program

**MONTANA RAIL LINK, INC.,
Respondent.**

Date: 1-29-03

By: SIGNED

Title: Executive Vice President

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **FINAL ORDER/CONSENT AGREEMENT** in the matter of **MONTANA RAIL LINK, INC., DOCKET NO.: CWA-08-2002-44** was filed with the Regional Hearing Clerk on February 6, 2003.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Brenda Morris, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt to:

Rebecca L. Summerville
Datsopoulos, MacDonald & Lind, P.C.
201 West Main Street, Suite 201
Missoula, MT 59802

and

Commander
U.S. Coast Guard
Finance Center
1430 A Kristina Way
Chesapeake, VA 23326

February 6, 2003

SIGNED

Tina Artemis
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE
ON FEBRUARY 6, 2003.**

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS PLEASE CONTACT THE
REGIONAL HEARING CLERK.**